IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3559 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT LEATHER INDUSTRIES LTD

Versus

MAHENDRAKUMAR PAWAR

Appearance:

MR KIRAN C RAVAL for Petitioner

MR TR MISHRA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /09/1999

C.A.V. JUDGEMENT

The petitioner through this writ petition has challenged the legality of the award dated 30.1.1999 rendered by the Labour Court, Bharuch, directing the petitioner to reinstate three respondents to their original post with 60 per cent backwages and continuity of service together with Rs. 300/- as cost and has prayed that the said award be quashed being illegal.

2. The brief facts giving rise to this petition are as under:

3. The petitioner is a registered Company. The respondents were employed by the petitioner in May, 1980 as machine operators. They were members of the Trade Union. Allegations of serious misconduct were made against the respondents. Show cause notice was given to them on 3.11.1982 under the applicable Standing Orders. The incident occurred on 21.10.1982 between 8.05 a.m. and 8.40 a.m. Explanation of the respondents was not satisfactory hence charge-sheets were served on them. Domestic enquiry was conducted. Pending enquiry the respondents were suspended. The Enquiry Officer after completing enquiry by observing principles of natural justice, submitted a report dated 7.2.1983. On 26.2.1983 the Director of the petitioner Company by a reasoned order awarded major punishment and dismissed all the three respondents. The respondents were heard before the impugned order was passed. The respondents approached appropriate Government and reference of the industrial dispute was made to the Labour Court.

4. The allegations of the respondents before the Labour Court were that they were serving sincerely and honestly since the date of their appointment. However, certain demands were made regarding inadequate salary of the workers keeping in view the profits earned by the Company. The petitioner Company was also not providing other necessary amenities to the workers. Since the Company did not accede to the demands, a Union was formed and the respondents were its members. It was alleged by them that the order of dismissal was mala fide with a view to crush the activities of the Union of which the respondents were active members. They also alleged that adequate opportunity of hearing was not afforded to them in the domestic enquiry by the Enquiry Officer. The order of dismissal was, therefore, challenged before the Labour Court.

5. The stand of the petitioner was that the respondents committed serious misconduct. Disciplinary enquiry was conducted in accordance with rules and principles of natural justice were duly observed in the course of enquiry. Charges were found established. The charges were of serious nature which included serious misconduct and insubordination etc. Accordingly the respondents were dismissed from service. The order of dismissal was said to be valid, legal and in accordance with rules.

6. The Labour Court however found that the order of dismissal was not invalid. It however found, looking to the charges established against the respondents, that the punishment of dismissal from service was disproportionate to the charges established against the respondents. Accordingly, the order of dismissal was set aside by the Labour Court. The Labour Court further granted backwages at the rate of 60% with continuity of service. This award is under challenge in this writ petition.

7. Learned counsel for the parties were heard and the material on record was examined. The cases cited were also taken into consideration. After giving my thoughtful consideration to the entire material on record and the law on the subject it can be said that the impugned award is a presumptive award and it suffers from the error apparent on the face of the record as well as on the face of the award. This court in exercise of writ jurisdiction will not sit as court of appeal over the award passed by the Labour Court. On the other hand, instead of substituting its own views over the view taken by the Labour Court this court will examine whether there is any manifest error of law on the face of the record as well as on the face of the award. If such error is found to exist in the award as well as on the record there should be no hesistation in interfering in the matter of quashing the award. The errors which are apparent on the face of the award can be highlighted as under. If the award is found to be presumptive it can certainly be set aside. If the award is rendered on some presumptions it cannot be sustained. On the other hand the award should have been based on the evidence produced by the parties before the Labour Court. At page 9 of the English translation of the award the following lines will show that it was presumptive award where on the basis of mere presumption view was taken against the petitioner. The relevant portions are quoted below:-

> "It is presumed that the simple mistake of the applicants is given a shape of a serious type of misconduct by the Company. And it is not in the interest of justice to snatch away bread of the workers by dismissing them permanently because of such misconduct."

Thus the first presumption raised by the Labour Court is that it was a case of simple mistake which was given the shape of serious type of misconduct by the petitioner. In so doing the Labour Court has totally ignored the findings of the Enquiry Officer as well as the charges framed against the respondents by the Enquiry

Officer. It was not a case of single misconduct. The Labour Court at page 7 of the English translation of the award has observed that the incidents of all the allegations are of 5 to 7 minutes. This is factually incorrect. The Labour Court has not cared to look into the charges framed against the respondents by the Enquiry Officer. Annexure-A to the writ petition collectively indicates that the incidents commenced at 8.05 a.m. and continued till or after 8.40 a.m. It was therefore not a case where the incident was completed within 5 to 7 minutes. As many as 5 to 6 allegations of different incidents, though in continuity, were made in the charge-sheets served on the respondents. Two respondents were served with chargesheet containing five charges. The gross misconduct alleged in the chargesheet was riotous and disorderly behaviour during working hours in the establishment or act subversive of discipline, (2) Negligent and irresponsible attitude towards work, (3) Wilful insubordination and disobedience whether alone or in combination with others to lawful and reasonable orders of superiors (4) Using abusive language and threatening the employees and officers of the Company during working hours in the factory premises (5) and also attempting to assault on the life of the employees of the Company during working hours in the factory premises. These allegations cannot be said to be simple act of misconduct. To this extent, the award ignores the material on record and as such there is apparent error on the face of the record as well as on the award.

8. The report of the Enquiry Officer which is a detailed one was also not properly considered by the Labour Court; rather it can be said that there was no consideration of the enquiry report submitted by the Enquiry Officer.

9. Annexure-D contains reasons for imposing punishment by the Director of the petitioner Company who was the punishing authority. It is a detailed order passed by the punishing authority. The punishing authority considered the report of the Enquiry Officer and also afforded an opportunity of hearing to the representatives of both the parties. The evidence on record was also considered by the punishing authority and it found that the incident on account of which the respondents were chargesheeted did take place. It was however of the view that the respondents individually and jointly neglected their work, left their place of work, told the watchmen not to allow the late comers to enter the premises of the factory, threatened the watchmen and officers with dire consequences using unprintable abusive language and attempted to beat officers of the Company.

It further found that Shri Awasthi besides using abusive language also went to the extent of threatening to kill and suck the blood of those who would do staff duty and to make the watchman dance naked throughout the factory premises, beat them, lift and throw them out of the factory gate. The respondents Shri M.K. Pawar and Shri V.S. Chauhan without any authority instructed the watchmen not to allow any late coming officers inside the gate and further threatened them that if they did so they would be beaten to such an extent that their skin would be peeled off. They also went to the extent of visiting Shri Sharma in his department and took active part in pressurising Shri Sharma to get out of his office. The respondent Shri Pawar showered abuses on Shri Sharma and on protest of Shri Sharma he was threatened of dire consequences and further threat was given to beat him. These allegations were found established by the punishing authority. This was also not considered by the Labour Court. It was not a case of single incident; rather an atmosphere of riot was created inside the factory premises. It was a serious type of misconduct and the incident lasted for more than 35 minutes. It therefore cannot be said that the order of dismissal was vindictive in nature or it was passed with a view to crush the activities of the respondents who were active members of the Union of employees.

10. If these findings of the punishing authority and the finding of the Enquiry Officer were not considered by the Labour Court it can be said again that the award is based on presumptions and it has ignored the material evidence on record. Consequently, it becomes a perverse award, which cannot be sustained.

11. The learned counsel for the respondents contended that all the charges were not proved against the respondents and that there is a contradiction in the finding recorded by the Enquiry Officer and that recorded by the punishing authority. To my point, it is not necessary that in a domestic enquiry all the charges should have been proved. If the charge of serious misconduct was proved it was sufficient to award punishment of dismissal from service. It is also difficult to appreciate the contentions that punishing authority was bound to endorse the findings of the Enquiry Officer. If, from the material on record, he finds some more misconduct proved against the respondents, he could have taken notice thereof and it cannot be said that there is such contradiction between the findings of the Enquiry Officer and that of the punishing authority that it has rendered the order of

dismissal illegal. In substance on the point of serious type of misconduct the Enquiry Officer as well as the punishing authority have taken identical view. Hence the order of dismissal could not have been quashed by the Labour Court.

12. At some stage in the Departmental enquiry the validity of enquiry proceedings was challenged by the respondents. The Labour Court at page 6 of the English translation of the award, observed that by order dated 21.1.1995 below Exh. 32 the departmental enquiry was held legal and as per the principles of natural justice. The Labour Court further observed that considering the whole record of the case and findings given in the departmental enquiry conducted for the allegations made against the applicants (respondents) it is clear that it is proper, valid and legal. If this was the finding of the Labour Court that the enquiry proceedings were validly conducted and were legal and proper, then the Labour Court should have given cogent reasons for taking a different view on the finding of guilt than that recorded by the Enquiry Officer as well as by the punishing authority. The award shows that no reason has been given by the Labour Court while it took a different view in the matter and ignored the findings of the Enquiry Officer and the punishing authority. The award on the other hand indicates that the allegations of misconduct were established during enquiry and were accepted by the Labour Court. If this was so then the Labour Court should have given cogent reasons for awarding lesser punishment, namely, directing reinstatement of the respondents with 60 per cent backwages.

13. Under Section 11 of the Industrial Disputes Act, 1947, if the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Jurisdiction under Section 11-A of the Act is not to be arbitrarily exercised by the Labour Court. On the other hand this discretion conferred under Section 11-A of the Act has to be exercised judicially and not arbitrarily. If this is so then a duty is cast on the Labour Court to give some reasons why the order of dismissal passed by the appointing authority cannot be maintained and that lesser

punishment is required to be given on the facts and circumstances of the case. If no cogent reasons are given while exercising jurisdiction under Section 11-A of the Act the award can be said to be arbitrary and modification can be said to be without any reason. As such modification of order of dismissal will also be rendered illegal and the award can be said to be erroneous in the eyes of law. The only reason given by the Labour Court at page 9 of the English translation of the award is that `it is not in the interest of justice to snatch away bread of the workers by dismissing them permanently because of such misconduct'. Interest of justice is not the consideration for modifying the punishment. Moreover, if the principles of interest of justice are to be kept in mind then justice should be administered to both the parties namely, the employee and the employer. The Labour Court has duty to balance the interest of justice between the employee and the employer. It should have taken into consideration whether the misconduct of the workmen was of such nature that the entire discipline in the factory was likely to be disturbed and whether any congenial atmosphere was disturbed in the premises because of such incident so that the work in the factory may not be seriously hampered and the trading activity may come to a standstill. If the activity or misconduct was of minor nature then of course the major punishment of dismissal cannot be sustained.

14. Learned counsel for the respondents however contended that if the abuses were made only once, major punishment of dismissal cannot be justified. He further contended that mere use of abusive language against the employer is not a serious misconduct for which the respondents could be dismissed. Reliance was placed on the apex court decision in the case of Ved Prakash Gupta Vs. Messrs Delton Cable India (P) Ltd. (1984) I LLJ 546. This judgement was relied on by the Labour Court in its award. This case is however distinguishable on facts. The apex court on facts and circumstances of the case found in this case that the charges of use of abusive language against the appellant was not a serious one. The apex court observed that it is not known how the charge of using abusive language, even if proved, would result in any, much less total, loss of confidence of the management in the appellant. It is on these established facts that the apex court held that the punishment awarded to the appellant is shockingly disproportionate, regard being had to the charge framed against him. As against this, from the charge-sheet and findings of the Enquiry Officer as well as the punishing

authority, it is clear that it was not a case where the allegation was that the respondents merely hurled abuses. On the other hand, so many serious misconducts were alleged specifically against the respondents and were found established. Threat was given to the officer Shri Sharma to beat him, threat was given to watchman not to allow late comers to enter premises of the factory, threats were given to other employees of the factory and the like which cannot be equated with mere use of abusive language. As such the verdict of the apex court in Ved Prakash Gupta Vs. Messrs Delton Cable India (P) Ltd. (supra) cannot be applied to the facts of the case before me. On the other hand the verdict of the apex court in New Shorrock Mills Vs. Maheshbhal T. Rao 1996 (74) FLR 2749 applies with full force to the facts of the case before me. In that case also the Labour Court came to the conclusion that the finding of the departmental enquiry was legal and proper and the order of discharge was not by way of victimisation. It was further found that the workman had seriously misbehaved and was guilty of misconduct. In face of this finding the punishment of dismissal was set aside by the Labour Court and reinstatement was ordered with 40 percent backwages. Apex court held that the Labour Court on these established facts ought not to have interfered with the punishment which was awarded in the manner it did. The allegations against the workman in this case were not as serious as are established in the writ petition before me. In that case the allegations were that the respondent entered the office of the Deputy Manager and started abusing him and threatened that the mill officers will not be safe outside the mill and that he did not care if he had to go to jail for murder of four to five officers. These allegations of misconduct were on lesser footing than the misconduct established in the order of the punishing authority. Besides using abusing language the respondents individually as well as jointly neglected their work and left their place of work and this was certainly an act of dereliction of duty. They without any authority directed the watchmen not to allow late comers to enter factory premises. They also threatened the watchmen and officers with dire consequences. They also attempted to beat the officers of the Company though actually that could not materialize. One of the respondents Shri Awasthi went to the extent of not only abusing but threatening to kill and suck the blood of those members of the staff who would do staff duty. He also threatened the watchmen to dance naked throughout the factory and beat them and lift and throw them out of the factory gate. This was the serious misconduct extending serious type of threats to the life of the

watchmen and also prohibiting the watchmen from discharging their duties effectively. The other two respondents namely Shri M.K. Pawar and Shri V.S. Chauhan instructed the watchmen not to allow any late coming officers inside the gate of the factory. They further threatened that the officers coming late will be seriously beaten and their skin would be peeled off. An attempt was also made by them to beat Shri Sharma in his office and he was threatened to go out of the office. Such serious type of allegation should not have been lightly taken by the Labour Court. If ignoring this serious type of misconduct, jurisdiction was exercised under Section 11-A of the Act to modify the order of dismissal it could be said that it was a case of illegal and in any case excessive exercise of jurisdiction under Section 11A of the Act by the Labour Court which has also rendered the award illegal.

15. On the point of award of 60 per cent backwages to the respondents the award is again illegal and erroneous. While granting such award the Labour Court did not consider the material admission made by the respondents. It is true that the onus of proving that the respondents were gainfully employed after their dismissal is upon the employer and this onus cannot be shifted on the shoulders of the workmen. However, if the workmen or the respondents themselves admitted that they were gainfully employed after their dismissal, no further evidence was required to be adduced by the petitioner. The admission of the respondents will be the best evidence against them inasmuch as these admissions were not explained by them to be erroneous or could have been made under some mistaken notion. In the oral evidence of the respondents contained in Exh. 33, 34 and 14 the respondent No. 1 admitted that his salary at the time of dismissal was Rs. 800/- and that he was earning Rs. 20/- to Rs. 25/- by selling vegetables after dismissal. The income from gainful employment after dismissal of the respondent No. 1 would come to Rs. 600/- to Rs. 750/-. If this was so then there was hardly any justification for awarding 60 per cent backwages. Respondent No. 2 likewise admitted that his salary was Rs. 1000/- at the time of dismissal and he was earning between Rs. 35/- and Rs. 40/- per day from the work of packing agarbati. Thus, the income from gainful employment of respondent No. 2 after dismissal from service worked out to Rs. 1050/- to Rs. 1200/- per month which was in excess of the salary which was drawn by the respondent on the date of dismissal. Likewise respondent No. 3 stated that his last drawn salary was Rs. 550/- and that he was earning Rs. 20/to Rs. 25/per day from tailoring work and in cross

examination, he stated, that he was earning Rs. 500/- to Rs. 600/- per month. In view of this evidence there was hardly any justification for the Labour Court to award 60 per cent backwages. The Labour Court at page 8 of the English translation of the award has taken note of the statement made by one of the respondents Shri Chauhan that the salary of his co-workers at present is about Rs. 2200/to Rs. 2500/per month. Noticing this figure, it is really astonishing that the Labour Court awarded 60 per cent backwages hence this portion of the award is rendered illegal, invalid as well as arbitrary.

Looking to the charges established against the respondents by no stretch of imagination it can be said or held that the punishment awarded to them is shockingly disproportionate, regard being had to the charges framed and established against them. Consequently, the entire award is rendered illegal and invalid.

16. The petition therefore is to be allowed and is accordingly allowed. The impugned award dated 30.1.1999 is hereby quashed. No order as to costs.

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